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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-231

13 **JEFFREY ALAN MESSINGER**
14 76 Queens Avenue
Stratford, Connecticut 06614

ACCUSATION

15 Registered Nurse License No. RN 494583
16 Nurse Anesthetist Certificate No. 2626

17 Respondent.

18 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the
21 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
22 Affairs.

23 **License History**

24 2. On or about August 31, 1993, the Board issued Registered Nurse License
25 Number RN 494583 ("license") to Jeffrey Alan Messenger ("Respondent"). The license expired
26 on April 30, 2007.

27 3. The Board issued Nurse Anesthetist Certificate Number 2626 to
28 Respondent on April 24, 2000. The certificate expired on April 30, 2007.

STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

5. Code section 2764, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

6. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

7. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

COST RECOVERY

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

///

1 CAUSE FOR DISCIPLINE

2 (Out-of-State Discipline)

3 9. Respondent is subject to disciplinary action under Code section 2761,
4 subdivision (a)(4), on the grounds of unprofessional conduct, in that Respondent was disciplined
5 by the Connecticut State Board of Examiners for Nursing ("Connecticut Board"). Pursuant to the
6 Connecticut Board's Memorandum of Decision, Findings of Fact, Conclusions of Law,
7 Discussion, and Order, in the case entitled, *Department of Public Health v. Jeffrey Messinger,*
8 *RN, APRN, Lic. Nos. 063637 and 002321, Respondent, Petition Nos. 2005-0404-012-003 and*
9 *2005-0406-0101-039*, the Connecticut Board revoked Respondent's Advanced Practice
10 Registered Nurse License Number 002321 and Registered Nurse License Number 063637
11 effective January 17, 2007. A copy of that Order is attached as **Exhibit A**, and is incorporated
12 herein.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 16 1. Revoking or suspending Registered Nurse License Number RN 494583
17 issued to Jeffrey Alan Messinger;
- 18 2. Revoking or suspending Anesthetist Certificate Number 2626 issued to
19 Jeffrey Alan Messinger;
- 20 3. Ordering Jeffrey Alan Messinger to pay the Board the reasonable costs of
21 the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 22 4. Taking such other and further action as deemed necessary and proper.

23 DATED: 1/24/08

24 Ellen Huchbery for
25 RUTH ANN TERRY, M.P.H., R.N.
26 Executive Officer
27 Board of Registered Nursing
28 Department of Consumer Affairs
State of California
Complainant

EXHIBIT A

State of Connecticut Board of Examiners for Nursing
Memorandum of Decision and Order

**STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING**

Department of Public Health

Petition No. 2005-0406-012-003

Petition No. 2005-0406-010-039

vs.

Jeffrey Messinger, RN, APRN, Lic. Nos. 063637
and 002321

MEMORANDUM OF DECISION

Respondent

Procedural Background

The Board of Examiners for Nursing (hereinafter "the Board") was presented by the Department of Public Health (hereinafter "the Department") with a Statement of Charges and Motion for Summary Suspension dated December 19, 2005. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Jeffrey Messinger (hereinafter "respondent") which would subject respondent's registered and advanced practice registered nurse licenses to disciplinary action pursuant to *Conn. Gen. Stat.* §§ 19a-17 and 20-99(b).

Based on the allegations in the Statement of Charges and accompanying affidavits and reports, the Board found that respondent's continued nursing practice presented a clear and immediate danger to public health and safety. On January 4, 2006, the Board ordered, pursuant to its authority under § 4-182(c) and § 19a-17(c) of the General Statutes of Connecticut, that respondent's registered and advanced practice registered nurse licenses be summarily suspended pending a final determination by the Board of the allegations contained in the Statement of Charges. Dept. Exh. 1.

The Board issued a Notice of Hearing dated January 4, 2006, scheduling a hearing for February 1, 2006. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against him. State marshal, first class mail and certified mail return receipt requested to respondent delivered the Notice of Hearing and Statement of Charges. Dept. Exh. 1.

The hearing took place on February 1, May 3, and October 18, 2006, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present and represented himself during the hearing on February 1, and May 3, 2006, but was not present on October 18, 2006, and was not represented by counsel. Tr. 02/01/06, p. 1; Tr. 05/03/06, p. 1; Tr. 10/18/006, p. 2.

Respondent submitted a written Answer to the Statement of Charges. Board Exh. 1.

Each member of the Board involved in this decision attests that he/she was present at the hearing or has reviewed the record, and that this decision is based entirely on the record, the law, and the Board's specialized professional knowledge in evaluating the evidence.

Findings of Fact

Based on the testimony given and the exhibits offered into evidence, the Board makes the following Findings of Fact:

1. Jeffrey Messinger of Stratford, Connecticut is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut advanced practice registered nurse license number 002321 and registered nurse license number 063637. Dept. Exh. 2-2.
2. Between at least November 2003, and May 2005, respondent wrote multiple prescriptions for ML, his wife, for:
 - a. Vicodin ES (hydrocodone/APAP 7.5-75), a schedule II narcotic controlled substance;
 - b. Ambien, a schedule IV controlled substance;
 - c. Lorazepam, a schedule IV controlled substance; and/or,
 - d. Xanax, a schedule IV controlled substance.Tr. 10/18/06, 20-23.
3. Beginning on at least November 18, 2003, and continuing until approximately May 20, 2005, respondent wrote multiple prescriptions for ML for Vicodin ES. In the period between April 24, 2005 and May 20, 2005, respondent wrote fourteen prescriptions for ML for Vicodin ES for a total of 840 tablets. The prescriptions were filled at six different pharmacies. Dept. Exh. 2, pp. 1-23; Dept. Exh. 2-5, p. 8; Tr. 10/18/06, pp. 20-23, 33.
4. On or about February 28, 2005, respondent's Connecticut controlled substance registration expired. On or after March 1, 2005, until approximately May 20, 2005, respondent wrote prescriptions for controlled substances for ML. Dept. Exh. 2, pp. 1-23; Tr. 10/18/06, pp. 20-23, 35.
5. Between November 2004 and May 2005, respondent failed to:
 - a. Maintain a medical record for ML; and/or,
 - b. Write prescriptions for ML for a legitimate, medical purpose.Dept. Exh. 2-2; Tr. 10/18/06, pp. 30-31.
6. On or about March 18, 2005, respondent was working as a nurse anesthetist at Shamokin Hospital in Coal Township, Pennsylvania. Dept. Exh. 2-2, p. 10.
7. While respondent was on duty, he diverted succinylcholine, which he self-injected in an attempt to commit suicide. Dept. Exh. 2-2 and 2-24, p. 7; Tr. 10/18/06, pp. 42-43.

Conclusions of Law and Discussion

In consideration of the above Findings of Fact, the following conclusions are rendered:

Jeffrey Messinger held valid registered and advanced practice registered nurse licenses in the State of Connecticut at all times referenced in the Statement of Charges.

The Notice of Hearing and Statement of Charges provided sufficient legal notice as mandated by *Conn. Gen. Stat.* §§ 4-177(a) and (b), and 4-182(c). The hearing was held in accordance with *Conn. Gen. Stat.* Chapters 54 and 368a as well as §§ 19a-9-1 through 19a-9-29 of the Regulations of Connecticut State Agencies.

The Notice of Hearing, Statement of Charges, and the hearing process provided respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by *Conn. Gen. Stat.* § 4-182(c).

The Department bears the burden of proof by a preponderance of the evidence in this matter.

PARAGRAPHS 1 and 7 of the Statement of Charges allege that Jeffrey Messinger of Stratford, Connecticut is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut advanced practice registered nurse license number 002321 and registered nurse license number 063637. Respondent denies this charge. Board Exh. 1.

PARAGRAPH 2 of the Statement of Charges alleges that between at least November 2003 and May 2005, respondent wrote multiple prescriptions for ML, his wife, for:

- a. Vicodin ES (hydrocodone/APAP 7.5-75), a schedule II narcotic controlled substance;
- b. Ambien, a schedule IV controlled substance;
- c. Lorazepam, a schedule IV controlled substance; and/or,
- d. Xanax, a schedule IV controlled substance.

Respondent denies these charges. Board Exh. 1.

PARAGRAPH 3 of the Statement of Charges alleges that beginning on at least November 18, 2003 and continuing until approximately May 20, 2005, respondent wrote multiple prescriptions for ML for Vicodin ES. Considering the time period of April 24, 2005 through May 20, 2005, respondent wrote fourteen prescriptions for ML for Vicodin ES for a total of 840 tablets. The prescriptions were filled at six different pharmacies.

Respondent denies this charge. Board Exh. 1.

PARAGRAPH 4 of the Statement of Charges alleges that on or about February 28, 2005, respondent's Connecticut controlled substance registration expired. On or after March 1, 2005, until approximately May 20, 2005, respondent wrote prescriptions for controlled substances for ML.

Respondent denies this charge. Board Exh. 1.

PARAGRAPH 5 of the Statement of Charges alleges that between November 2004 and May 2005, respondent failed to:

- a. Maintain a medical record for ML; and/or,
- b. Write prescriptions for ML for a legitimate, medical purpose.

Respondent denies these charges. Board Exh. 1.

PARAGRAPH 8 of the Statement of Charges alleges that on or about March 18, 2005, respondent was working as a nurse anesthetist at Shamokin Hospital in Coal Township, Pennsylvania.

Respondent denies this charge. Board Exh. 1.

PARAGRAPH 9 of the Statement of Charges alleges that while respondent was on duty, he diverted succinylcholine, which he self-injected in an attempt to commit suicide.

Respondent denies this charge. Board Exh. 1.

The General Statutes of Connecticut § 20-99 provides in relevant part:

(a) The Board of Examiners for Nursing shall have jurisdiction to hear all charges of conduct which fails to conform to the accepted standards of the nursing profession brought against persons licensed to practice nursing. After holding a hearing . . . said board, if it finds such person to be guilty, may revoke or suspend his or her license or take any of the actions set forth in section 19a-17. . . .

(b) Conduct which fails to conform to the accepted standards of the nursing profession includes, but is not limited to, the following: . . (2) illegal conduct, incompetence or negligence in carrying out usual nursing functions; . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals; (6) fraud or material deception in the course of professional services or activities. . . .

Based on its findings, the Board concludes that the Department proved the allegations by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§ 20-99(b)(2), (6) and 19a-17, but that such conduct does not constitute a violation of § 20-99(b)(5) as alleged in paragraph 10(b) of the Statement of Charges.

Order

Pursuant to its authority under *Conn. Gen. Stat. §§ 19a-17 and 20-99*, the Board of Examiners for Nursing hereby orders the following:

1. That, with the exception of Paragraph 10(b), for all the Paragraphs of the Statement of Charges, respondent's advanced practice registered nurse license number 002321 and registered nurse license number 063637, are revoked effective the date this Memorandum of Decision is signed by the Board.

The Board of Examiners for Nursing hereby informs respondent, Jeffrey Messinger, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Newington, Connecticut this 17th day of January 2007.

BOARD OF EXAMINERS FOR NURSING

By

A handwritten signature in dark ink, appearing to read "Nancy S. Befudo", is written over a horizontal line.

CERTIFICATION

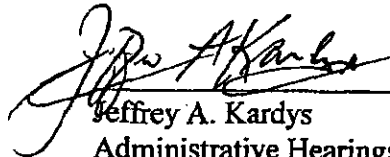
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 18th day of JANUARY 2007, by certified mail, return receipt requested and first class mail, to:

Jeffrey Messinger, RN, APRN
76 Queens Avenue
Stratford, CT 06614

Certified Mail RRR #70042510000753840916

and by Inter-Departmental Mail to:

Stanley K. Peck, Director
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
Department of Public Health
Public Health Hearing Office

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
HEALTHCARE SYSTEMS BRANCH

In re: Jeffrey Messinger, APRN
Jeffrey Messinger, RN

Petition No. 2005-0406-012-003
Petition No. 2005-0406-010-039

SUMMARY SUSPENSION ORDER

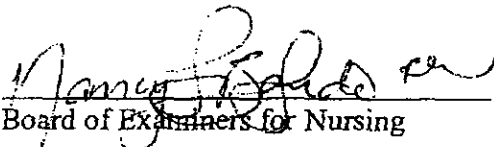
WHEREAS, certified reports of Pallavi Kansal, Drug Control Agent, and Lavita Sookram, RN, Nurse Consultant, allege facts that show violations of §20-99 of the Connecticut General Statutes, as amended, and which imperatively require emergency action in that the public health, safety or welfare of the citizens of the State of Connecticut is in clear and immediate danger; and,

Pursuant to the authority of §4-182(c) and §19a-17(c), pending the hearing set for the 1st day of FEBRUARY, ~~2005~~/2006, at 11:30 a.m.

It is hereby ORDERED, by vote of the Connecticut Board of Examiners for Nursing (hereinafter "the Board") that advanced practice registered nurse license number 002321 and registered nurse license number 063637 of Jeffrey Messinger to practice nursing in the State of Connecticut are summarily suspended pending a final determination by the Board regarding the allegations contained in the Statement of Charges.

Further it is hereby ordered by vote of the Board that Jeffrey Messinger immediately surrender his license numbers 002321 and 063637 to the Board, 410 Capitol Avenue, MS #13PHO, P.O. Box 340308, Hartford, CT 06134-0308 upon notification of this Order.

Dated at HARTFORD Connecticut this 4th day of JANUARY ~~2005~~/2006.


Board of Examiners for Nursing